



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document Reviewed (include title): **WAC 458-20-229 Refunds**

Date last reviewed: **June 18, 1997**

Current Reviewer: **Pat Moses**

Date current review completed: **September 18, 2001**

Is this document being reviewed at this time because of a taxpayer or association request? (If "YES", provide the name of the taxpayer/association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** **X**

Type an "x" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Briefly describe the subject matter of the rule(s):

Subjects included in Rule 229 are refunds of overpaid excise taxes, amending the combined excise tax return, interest on overpayments, statute of limitations waivers, and offsetting of overpayments against deficiencies.

2. Related statutes, interpretive statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories (PTAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered interpretive statements.)

YES	NO	
	X	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
X		Are there any interpretive statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive statements that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or



		Attorney Generals Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
	X	Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

Interim Audit Guideline (IAG) 02.01 “Refund of retail sales tax collected in error.” A seller who has collected excess sales tax in error may be able to obtain a refund. However, the refund may not exceed the amount actually refunded or credited to the original customer. Also, overcollected sales tax should not be offset against a seller’s other sales tax liabilities unless the amounts have been properly refunded or credited to the customer.

135 Wn 2d (1998) Supreme Court of Washington docket # 65178-7, Paccar, Inc. v. State of Washington Dept. of Revenue. Under a specific set of facts as presented in this case, it is possible for a taxpayer to receive a refund of excess taxes paid on a deficiency assessment for a period prior to the statutory four-year refund period if the taxpayer files a refund petition within four years of paying the deficiency assessment.

3. Additional information: Identify any additional issues (other than that noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

Refund interest accompanies a refund. IAG 02.01 clarifies the handling of overcollected sales tax but does not address how refund interest should be handled in those situations. Vendors often do not pay interest on their refunds to customers. The question of whether vendors are allowed to retain and benefit from all or part of the statutory refund interest should be addressed in the rule.

4. LISTING OF DOCUMENTS REVIEWED: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive statements, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **None additional since the last review.**



Interpretive statements (e.g., ETAs and PTAs):

IAG 02.01 “Refund of retail sales tax collected in error.”



Court Decisions:

135 Wn 2d (1998) Supreme Court of Washington docket # 65178-7, Paccar, Inc. v. State of Washington Dept. of Revenue.

Board of Tax Appeals Decisions (BTAs): **None additional since the last review.**

Administrative Decisions (e.g., WTDs):

17 WTD 278 (1998), Final Det 95-052ER – Per 82.32A.020, without erroneous written advice, there is no provision for the refund of taxes already voluntarily paid which were not the result of a tax deficiency assessment.

18 WTD 188 (1999), Final Det 97-192R – RCW 82.32.060 is a nonclaim statute, procedural in nature. The Department of Revenue cannot make any tax refunds without strict compliance with the terms of the statute.

18 WTD 316 (1999), Det 98-226 – When a taxpayer makes a refund request for taxes paid as part of a tax assessment, the taxpayer will receive refund of taxes overpaid during the audit period and beyond the normal four-year refund period if the refund request is made within the statutory period following the payment of the tax assessment.

19 WTD 567 (2000), Det 99-158 – Where the Dept. receives payment from a taxpayer's bank in excess of the amount due on a warrant, but the taxpayer also has an outstanding assessment, the Dept. may properly apply the excess amount to the assessment.

19 WTD 670 (2000), Det 99-351 – There is no duty on a taxpayer to exhaust administrative remedies with regard to the Dept's review processes before challenging the Dept in a refund action under RCW 82.32.180 (an appeal to the superior court of Thurston county).

19 WTD 748 (2000), Det 98-148 – An out-of-state manufacturer was not entitled to a refund of selling B&O taxes previously paid on sales of goods shipped from its out-of-state plant when the goods were sold F.O.B. shipping point and shipped freight pre-paid.

20 WTD 53 (2001), Det 00-099 -- There is no duty on a taxpayer to exhaust administrative remedies with regard to the Dept's review processes before challenging the Dept in a refund action under RCW 82.32.180 (an appeal to the superior court of Thurston county).

Attorney General's Opinions (AGOs): **None additional since the last review.**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):



4. Review Recommendation:

- X **Amend**
- _____ **Repeal** (Appropriate when repeal is not conditioned upon another rule-making action.)
- _____ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- _____ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

See below

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

In addition to the reasons stated in the previous review, this rule should be amended to incorporate the decision of the court in 135 Wn 2d (1998) Supreme Court of Washington docket # 65178-7, also known as “Paccar.” The subject matter of IAG 02.01 concerning refund of overcollected sales tax should be addressed, along with the correct handling of associated refund interest.

5. Manager action: Date: _____

_____ Reviewed and accepted recommendation

Amendment priority:

- _____ 1
_____ 2
_____ 3
_____ 4

